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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/436,984

11/09/1999

SHUNPEI YAMAZAKI

0756-2063

7375

7590

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EXAMINER

COLEMAN, WILLIAM D

ART UNIT

PAPER NUMBER

2823

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/436,984

Applicant(s)

YAMAZAKI ET AL.

Examiner

W. David Coleman

Art Unit

2823

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 32-55 and 60-83.
Claim(s) withdrawn from consideration: 1-14 and 31.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

W. David Coleman
Primary Examiner
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DETAILED ACTION

Response to Arguments

1. Applicants remarks filed February 21, 2006 have been considered, however upon further review the request for reconsideration does not preclude the nonstatutory obviousness-type double patenting as being unpatentable over claims 1,9,15, 17, 18, 19, 27, 37, 46, 57 and 66 of U.S. Patent No. 6,274,887 to Yamazaki et al., (hereafter Yamazaki '887).

2. Applicants contend that claims 32, 38, 44 and 50 of the present invention recite “an insulating film on the gate electrode and the pair of (conductive) side walls”.

3. In response to Applicants contention that an additional pair of sidewalls are included in the claims, the Examiner has not found the term “conductive” in the limitations of claims 32, 38, 44 and 50 of the present invention. Please note that the only sidewalls that are conductive are the claimed gate electrodes. All gate electrodes have sidewalls and all gate electrodes are conductive for MOSFETs, including an additional pair of conductive sidewalls on a gate electrode without distinguishing the difference between the materials is very similar as adding water to water, it's still water and therefore the obvious-type double patenting rejection is maintained.

4. Applicants contend that claims 60, 66, and 72 recite “a second insulating film in contact with an upper surface and side surfaces of the gate electrode”.

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5. In response to Applicants contention that Yamazaki ('887) fails to teach "a second insulating film in contact with an upper surface and side surfaces of the gate electrode", please see claim 4 or Yamazaki ('877) wherein the wiring is covered by a silicon nitride film which is inherently an insulating film. If the first insulating film is the film between the wiring layer and the channel forming region, the silicon nitride is merely nothing more than the second insulating film partially covering the wiring film (i.e., gate electrode). Going from a silicon nitride film to a second insulating film appears to be a broadening of a claimed invention. Please note that Yamazaki ('887) even discloses the sidewalls being comprised of silicon for the wiring layer as described in claim 18.



W. DAVID COLEMAN
PRIMARY EXAMINER